

ARTICLE X. COMPLIANCE AND ENFORCEMENT

ARTICLE X. COMPLIANCE AND ENFORCEMENT

- Sec. 21-10000. Authority
- Sec. 21-10010. Complaints
- Sec. 21-10020. Right of Entry to Inspect
- Sec. 21-10030. Permit Denial
- Sec. 21-10040. Permit Revocation
- Sec. 21-10050. Stop Work Order
- Sec. 21-10060. Abatement
- Sec. 21-10070. Criminal Action

Sec. 21-10000. Authority

The city manager is hereby authorized to enforce the provisions of this land development code.

Sec. 21-10010. Complaints

Any person may file a complaint alleging a violation of this land development code. Such complaints, stating fully the causes and basis thereof, may be made verbally or in writing. All written complaints are open to inspection under the state's open records law.

Sec. 21-10020. Right of Entry to Inspect

- (1) **Right of Entry Generally.** When necessary to make an inspection to enforce any provisions of this land development code, or when the city has reason to believe there exists in any building or upon any land any condition that constitutes a violation of this land development code, an authorized city employee or agent may present proper credentials and request entry. If entry is refused or if the owner cannot be located after reasonable effort, the city shall give the owner or, if the owner cannot be located, leave at the building or premises, a written notice of the city's intent to inspect the property. The notice shall set forth the time, not sooner than 24 hours after the notice of intent to inspect is given or left, at which the city will return for inspection. The notice shall state that the owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a municipal judge of the city, or by a judge of any other court having jurisdiction.

- (2) **Search Warrants.** Upon application by the city and a showing of probable cause, the judge shall issue a search warrant entitling the city agent to enter the building or the premises and authorizing the use of reasonable force, if necessary, to gain entry. To establish probable cause, the city agent shall not be required to demonstrate specific knowledge of the violation at issue, but must show some factual or practical circumstances that would cause an ordinary prudent person to believe a violation exists.
- (3) **Emergencies.** When an emergency situation exists in relation to the enforcement of any of the provisions of this land development code, a city agent may enter any building or upon any premises within the city, using such reasonable force as may be necessary. An emergency situation includes any situation of imminent danger of loss of, or injury or damage to, life, limb, property, or threat to public safety. It is unlawful for any owner of the building or premises to deny entry to a city agent or to resist reasonable force used by such agent acting pursuant to this subsection.
- (4) **Additional Considerations.** The city may use building and development permits, certificates of occupancy, stop work orders, civil or criminal actions, and abatement in its effort to obtain compliance with the provisions of this land development code. These enforcement alternatives, and the remedies available under each, shall be cumulative, are intended to be in addition to any other remedy provided by law, and may be exercised in any order. In addition, when the city has sufficient evidence that a person is violating any provision of this land development code, the city may apply to any court of competent jurisdiction to temporarily or permanently enjoin the continuance of the violation. In any such injunction action, the city shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law

Sec. 21-10030. Permit Denial

The city may deny an application for a permit, certificate, or other form of development authorization on the basis that the requirements for the issuance of such permit, certificate, or authorization have not been satisfied. Further, the city may deny such applications due to the existence of a land use violation that is related to the permit, certificate, or authorization being sought; or the city may grant such authorization subject to the condition that the violation be corrected. This provision shall apply whether or not the applicant is responsible for the violation.

Sec. 21-10040. Permit Revocation

- (1) **Just Cause.** After notice and hearing, the city may revoke any permit, certificate, or other development authorization or approval upon finding that just cause exists for the revocation. Just cause shall be deemed to

exist in the following circumstances, which are offered by way of example and not limitation:

- (a) There has been a material departure from the approved plans, specifications or conditions of approval;
 - (b) The permit holder has failed to comply with any condition of approval;
 - (c) The permit, certificate, or development authorization or approval was obtained by fraud or misrepresentation; or
 - (d) The permit, certificate, or development authorization or approval was issued in error.
- (2) **Notice to Intent to Revoke.** Written notice of the city’s intent to revoke may be served by personally delivering a copy of the notice to the applicant or the person to whom the permit was issued, if different, or by posting the notice in a conspicuous location at the place of the violation. Such notice shall set forth the grounds for the proposed revocation and a date and time for hearing.
- (3) **Effect of Revocation.** It shall be unlawful for any person to conduct any activity in reliance upon any permit, certificate, or authorization after the written notice of revocation of such permit, certificate, or authorization has been served in accordance with this section.

Sec. 21-10050. Stop Work Order

If the use of property or the construction of any structure is contrary to the provisions of this land development code or any permit issued pursuant to this land development code, the city manager may order that the use of the property or the construction of the structure be stopped. A stop work order shall be effective when written notice is served upon any person engaged in using the property or in doing or causing the construction work to be done, or by posting written notice in a conspicuous place on the property when no person can be served in the aforesaid manner. Failure of the city to issue a stop work order shall in no event be deemed to legalize, authorize, or excuse the violation.

Sec. 21-10060. Abatement

- (1) **Notice to Abate.** Any authorized city employee, upon the discovery of any violation of this land development code, may issue a notice to abate. The notice shall be in writing and shall specify the violation observed, the property on which the violation is located, and provide a date by which the violation must be abated from the property (voluntary abatement period).

(2) **Service of Notice.**

- (a) Written notice to abate shall be served by:
 - (i) Personally delivering a copy of the notice to the owner of the property or any other person responsible for the violation;
 - (ii) Mailing a copy of the notice by first class mail to the last known address of the owner as reflected in the county assessor's records; or
 - (iii) Posting a copy of the notice in a conspicuous place at the premises.
- (b) Service shall be deemed complete upon personal delivery, posting, or five days after the date of mailing, as applicable.

(3) **Abatement Order.** Upon the expiration of the voluntary abatement period, or at any time thereafter, if the violation has not been abated, the city may seek an abatement order from the municipal court. The procedures related to obtaining an abatement order, and the grounds under which such orders shall be entered, shall be as follows:

- (a) The city may seek an abatement order by filing an application for such with the municipal court. An application for an abatement order shall be accompanied by an affidavit affirming that the city has complied with the notice requirements of subsection (2) and that the identified violation has not been abated;
- (b) The city shall give notice of its application for the abatement order in the same manner as provided above for service of the original notice;
- (c) The notice of application for an abatement order shall include a copy of the city's application, the affidavit in support thereof, and the time, date, and place at which the city will appear before the municipal court to request entry of the abatement order (hearing);
- (d) At the hearing, the municipal court judge shall review the application for administrative abatement order, the affidavit, any statement or evidence of the city in support thereof, as well as any statement and evidence presented by the responsible party, if present;
- (e) In order to eliminate any unnecessary formality that may limit the municipal court judge's access to relevant information, the rules of evidence shall be relaxed during the hearing before the municipal court; and

- (f) At the conclusion of the hearing, if the court finds that the city has complied with the provisions of this section and that the cited violation has not been abated in its entirety, the municipal court shall enter an order permitting the city to enter upon such property, using such reasonable force as may be necessary to gain entry, abate the violation, and recover its costs as provided by paragraph 5 of this section.

- (4) **Abatement Without Notice or Court Order.** If the city manager reasonably believes that a violation poses imminent danger to the health, safety, or welfare of any person or to any property, the city manager may cause the violation to be abated without notice or court order.

- (5) **Recovery of Expense of Abatement.**
 - (a) The actual costs of abatement, plus 15 percent of such abatement costs for inspection, a minimum fee assessment of \$100 and other incidental costs of abatement, shall be assessed upon the lot, lots, or tracts of land upon which such violation is abated.

 - (b) Such costs shall be paid to the city within 30 days after the city has mailed notice of the assessment by certified mail to the owner of the property; provided, however, that if the property is occupied by someone other than the owner, the city shall mail such notice of assessment by certified mail to both the occupant and the owner. Service shall be complete upon depositing the notice within the United States Postal Service, postage prepaid for certified mail. Every such assessment shall be a lien in the amount assessed against such lot, lots, or tract of land until paid.

 - (c) Failure to pay such assessment within the 30-day period shall cause the assessment to become a lien against the land. This lien shall have priority over all other liens, except general taxes and prior special assessments. The city may certify the lien to the county treasurer and request that the county treasurer place the lien, with 15 percent penalty to defray the cost of collection, on the tax list for the current year and collect it in the same manner as other taxes are collected.

- (6) **Objection to Assessment.** Objections to assessments may be made by the party in interest by filing a written notice of such objection with the city manager within 30 days of the completion of the work. After reviewing the objection, the city manager will determine the reasonableness of the costs assessed and may reduce the assessment if it is determined that extenuating circumstance(s) support the reduction.

Sec. 21-10070. Criminal Action

The city may initiate a criminal action to prosecute any alleged violation of this land development code. Any person convicted of violating any provision of this land development code shall be guilty of a misdemeanor and shall be subject to the penalties set forth in the municipal code except, that no person may be imprisoned for a violation of this land development code. Further, unless the city has already sought abatement pursuant to section 21-10080, upon entering a criminal conviction, the court shall order:

- (1) The defendant to abate the violation by a date established by the court, which in no event shall exceed 30 days from the date of conviction (court ordered abatement period). The order shall specify that failure to abate within the established time may constitute contempt of court;
- (2) The defendant to permit the city to enter the property after expiration of the court ordered abatement period to inspect the property;
- (3) The city to abate any portion of the violation which remains at the expiration of the court ordered abatement period; and
- (4) The defendant to pay any costs incurred by the city in prosecuting, enforcing and abating the violation, plus 15 percent of such abatement costs for inspection and a minimum administrative fee of \$100.